IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)

Description of the case

Writ Petition No. 857 of 2004 (M/B)

Date of decision: 31st of August, 2004.

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar, C.J.

Hon'ble Mr. Justice Irshad Hussain, J..

- Whether the order/judgment should be sent to the reporters for reporting? ( )

- Whether the reporter be allowed to see the judgment? (Yes)

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 857 (M/B) of 2004

Rohit Tolia …… Petitioner

Versus

State of Uttaranchal
and others ……..… Respondents

……..

Sri Alok Singh, Senior Advocate, i/b Mr. Gopal Narain learned counsel for the petitioner.
Mr. N.C. Gupta, Standing Counsel, learned counsel for the State.

Coram: Hon. V.S.Sirpurkar, C.J.
Hon. Irshad Hussain, J.

Dated: August 31, 2004

1. Heard learned counsel for the parties.

2. The petitioner is an unfortunate candidate, but it is he, who has to be blamed. The petitioner appeared in a pre-medical test called PMT. He was successful. However, he did not join first counseling and chose to remain absent. According to Mr. Alok Singh, learned Senior Counsel appearing on behalf of the petitioner, the petitioner thought that he may not be able to get the seat in medical college for M. B. B. S. course in the first counseling at all. Therefore, he decided to take chance in the second counseling. The condition for the second counseling is as under:

> "यदि कोई अभ्यार्थी आवंटन के पश्चात पाठयक्रम ज्वाइन नही करता तो वह अगली काउंसिलिंग में भाग लेने हेतु अर्ह नहीं होगा। काउंसिलिंग सम्बन्धी सूचनायें समय समय पर अमर उजाला और दैनिक जागरण के उत्तरांचल संस्करणों में प्रकाशित की जाती रहेगी। अभ्यार्थी अपने ही हित में इन समाचार पत्रों का अवलोकन करते रहें।''

The English translation of the above passage in Hindi would be that in case any applicant does not join the course after allocation, he will not be eligible for taking part in the next counselling. The information with regard to counselling will be published from time to time in the Uttaranchal edition of Amar Ujala and Danik Jagaran. Applicants may keep watch on these newspapers in their own interest.

3. Unfortunately for the petitioner, there was another condition introduced by the nest communication and Notification. This was a notification for the second counselling, condition no. 11 of the same, is as under:

"Those candidates, who were allotted seats in various colleges during the first counselling, are also eligible to participate in the second counselling."

4. The petitioner feels aggrieved by this condition and says this amounts to introducing a condition to the detriment of the candidates like petitioner because the petitioner relying on the earlier mentioned condition quoted in Hindi, if takes his chance, will be put to jeopardy in case even the candidates, who were allotted seats in the colleges due to their higher percentage, are allowed to take part in the second counselling, thereby marring the chances of the persons like the petitioner. In short, the contention of the petitioner is that once any candidate takes part in the first counselling and is allotted seat, he shall be debarred from taking part in the second counselling.

5. We do not agree. The condition earlier mentioned in Hindi only suggests that if a person who attends the first counselling and is allotted seat, does not join the college, then alone he would not be entitled to take part in the further counselling. However, the learned counsel does not assert and the petitioner also does not say in the petition that there were some candidates, who were selected in the first counselling, but did not join the college, and yet were given facility to join in the second counselling. That is not the case on facts. The case simply pleaded is that the condition in the aforementioned first Notification, which we have quoted above, goes contrary to the next condition no.11, which we have quoted in Hindi. We do not find any contradiction in the two conditions. The interpretation being given by the petitioner that a candidate after his first counselling is allotted seat and joins the college, would not be able to take the benefit of condition no. 11, which we have quoted above, is completely incorrect. The thrust is on the student not joining at all after a seat is allotted to him. He would

undoubtedly be prohibited from taking part in further counselling. However after a seat is allotted to him and he joins the college, there is nothing in next condition no.11 to stop him for trying for another or better (according to him) college. It can always be that a candidate did take chance, attended the first counselling and joined the college, only such candidate would be entitled to take part in the second counselling. The only factor which would be relevant factor is that if he does not join the college after first counselling, he will not be entitled to appear in the subsequent counselling. The case of the petitioner is not that such a thing has happened. Therefore, we do not find any contradiction in the two conditions, which we have quoted in Hindi and the condition no. 11, which has been introduced after the first counselling.

6. Our attention is invited to the Notification for counselling, which appears at page 17 of the petition. Our attention is drawn to condition no. 7 “that candidate not willing to avail the seat as per his/her rank in the merit, is not required to appear before the Counselling Board. However, he/she shall remain eligible for the next counselling.” We do not think this condition in any way bristles against the condition, which was quoted by us in Hindi and condition no. 11 contained at page 24 of the petition, which we have quoted above, such a person would only be governed by condition no.11.

7. We do not find any merit in the writ petition. If the petitioner has not availed the first counselling and in the second counselling, some other better student, who were otherwise eligible (even if they had joined on the alloted seat in the first counselling), were selected, that cannot be said to be injustice to the petitioner.

8. The petition has no merit and is hereby dismissed.

(Irshad Hussain, J.) **(V.S.Sirpurkar, C.J.)**
31.8.2004 31.8.2004

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